

Commissioner Elizabeth Denham
Information Commissioner's Office
Wycliffe House
Water Lane
Cheshire
SK9 5AF

31 May 2019

Dear Commissioner,

Re: Age appropriate design: a code of practice for online services

This letter is on behalf of TIGA membership, the network for games developers and digital publishers and the trade association representing the video games industry. TIGA is dedicated to ensuring safeguarding players is a top priority for our industry and that proportionate actions are taken by games developers, digital publishers and platform providers to protect the interests and wellbeing of players, especially children. We aim to provide and share with our members best practice guidance that help developers and publishers keep players safe in their video games.

We have a number of concerns about the current drafting of the Age Appropriate Design Code and its potential to result in unwarranted or unintended consequences. We recommend that the Information Commissioner's Office (ICO) conducts further consultation with stakeholders before implementing the Code in its current form.

As outlined in the section 'services covered by this code', the Code in its current form applies to a service provider if 'your service is designed for and aimed specifically at children' and 'to services that aren't specifically aimed or targeted at children, but are nonetheless likely to be used by under-18s.' If a service provider believes only adults are 'likely' to use their service, this Code does not apply, however the service provider will need to be able to demonstrate that this is in fact the case.

We are concerned that the term 'likely' could be interpreted too broadly and extend the scope of the services subject to this Code, beyond initial intentions. This could also result in onerous and costly requirements on games developers to demonstrate their game's intended audience. For example, a games developer can go beyond their requirements to make clear their game is for over-18s, including meeting all legal requirements such as PEGI age ratings. However, it is possible that a video game which is not designed for children and is not legally purchasable by children, could be accessed by a child. This could be through parents or guardians purchasing games on behalf of their children, children playing their older sibling's games, or children creating gaming accounts using someone else's information. We suggest that the definition of 'likely' should be clearly set out within this Code. Games developers need to be able to know how they can reasonably demonstrate that they intend only adults are 'likely' to play their game.

One possible outcome of the Code in its current form is that designers could be required to develop separate versions of the same product for multiple age groups. For example, under the 'online tools' section of this draft Code, service providers are expected to 'provide prominent and accessible tools to help children exercise their data protection rights and report concerns.' The tools provided must also be age-appropriate and tailored to the age of the child in question. Family-friendly games can be played by any age group; the requirements under the current drafting of this section may require developers to build different versions of the same game for each age group, with different age-appropriate online tools. This would incur higher costs on games production and could prevent smaller studios from being able to explore and develop new titles.

Alternatively, some designers may exclude children from their games altogether, reducing consumer choice and excluding some children from the benefits of games. Research shows that video games can improve motor skills and improve vision¹; improve children's social skills and developing intelligence²; reduce reaction time, improve hand-eye co-ordination and raise players' self-esteem³; increase perception and memory⁴; improve cognitive functioning⁵; and help take up sports⁶. If requirements under this Code in its current form increase development costs for child-friendly games, the gaming market could become more adult focused and some children might even be excluded from some of the benefits of gaming.

Another possible outcome of the Code in its current form is that all games will be required to be designed under the assumption that they could be accessed by children, unless developers can prove otherwise. This encourages greater use of age-gating and age-verification. As a result, games developers will be required to collect and store more information about their players in order to prove the age of players 'likely' to access their game. This works against the Code's intentions of minimising personal data collection. Although the ICO has not specified what form of proof would be required, it has been speculated that companies might have to collect official documents such as copies of passports, driving licenses or credit cards.

It is unclear how some of the expectations set out in this draft Code relate to data protection. For example, under the section 'nudge techniques', the recommended technique 'wellbeing enhancing behaviours (such as taking breaks)' is vague and it is not clear how it relates to data protection. Under the section 'data protection impact assessments', it is unclear how some of the potential risks listed on pages 86 to 87 relate to data protection, such as 'interrupted or inadequate sleep patterns'. We recommend that before the final draft of the Code is published, further detail on what a 'good' Data Protection Impact Assessment looks like should be provided, as well as how failure in any of these areas would be measured.

TIGA remains committed to putting players at the heart of games and are happy to provide assistance to the ICO to ensure the final version of this Code meets its objectives, avoids creating barriers to games development and allows children to experience the many benefits of gaming.

Yours sincerely,



Dr Richard Wilson OBE
Chief Executive Officer
TIGA

¹ <https://theweek.com/articles/466852/7-health-benefits-playing-video-games>

² <http://www.independent.co.uk/news/science/video-games-children-learning-intelligence-social-skills-study-a6920961.html>

³ <http://sheu.org.uk/sheux/EH/eh203mg.pdf>

⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4682779/>

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3596277/>

⁶ http://www.drcherylolson.com/wp-content/uploads/2013/02/14_SPORTS-VIDEOGAMES-AND-REAL-WORLD-EXERCISE.pdf